S.B. Cr. Revision Petition No.423/2006

Adam

vs

State of Rajasthan & Ors.

DATE OF ORDER : 17.1.2007

HON'BLE JUSTICE SHRI G.S. SARRAF

Shri Mahesh Bora, for the petitioner.
Shri S.N. Tiwari, Public Prosecutor.
Shri Pradeep Shah, for the respondents nos.2 to 4.

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This is a revision petition against the order dated 3.3.2006 of the Addl. District & Sessions Judge (Fast Track), Balotra headquarter Barmer allowing the application of the accused persons filed under Section 311 Cr.P.C. and recalling the prosecution witnesses PW-1 to 3, 6 to 9, 12 to 14 and 16 for further cross-examination after framing of a new charge under Section 326 IPC.

Heard learned counsel for the petitioner, learned Public Prosecutor and learned counsel for the respondents nos.2 to 4.

Learned counsel for the petitioner submits that since a

charge under Section 307 IPC is already there against the accused persons, there is no necessity to recall the witnesses for further cross-examination after framing of charge under Section 326 IPC.

Learned counsel for the respondents nos.2 to 4 supports the order of the trial court.

Section 217(a) of Cr.P.C. provides that whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice. Thus, the accused as also the prosecutor has a statutory right to get the witness recalled in case of alteration or addition of a charge. There is no reason for me to suppose that the prosecution witnesses are being recalled for the purpose of vexation or delay or for defeating the ends of justice. Therefore, after considering the rival submissions of the learned counsels for the parties and after perusing the record I am of the opinion

that since a new charge under Section 326 IPC has been framed, the learned trial court has not committed any error or illegality in recalling the prosecution witnesses for further cross-examination.

The revision petition therefore stands dismissed.

(G.S. SARRAF), J.

cpgoyal/-